

Message Text

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DRAFTED BY TREASURY:RSELF:LPP
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FM SECSTATE WASHDC
TO AMEMBASSY TAIPEI

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E.O. 11652:N/A

TAGS: ETRD, EINV, TW

SUBJECT:INFORMATION ON COUNTERVAILING DUTY MATTERS

REF: 77 TAIPEI 7573

1. REFTEL REQUESTS GUIDANCE AS TO WHETHER THE TAX HOLIDAY PROVISION UNDER THE STATUTE FOR ENCOURAGEMENT OF INVESTMENT AND THE PROVISION OF DUTY-FREE TREATMENT OF IMPORTED MACHINERY MAY BE CONSIDERED A "BOUNTY OR GRANT" UNDER THE U.S. COUNTERVAILING DUTY LAW. IN SEVERAL COUNTERVAILING DUTY CASES INVOLVING TAIWAN IMPORTS, TREASURY HAS DETERMINED THAT THESE PROGRAMS ARE COUNTERVAILABLE. HOWEVER, IT HAS EITHER REVOKED COUNTERVAILING DUTY ORDERS OR DETERMINED THAT SUCH SUBSIDIES ARE DE MINIMIS BECAUSE THE GOVERNMENT OF THE ROC WAS ELIMINATING OR PHASING OUT SUCH ASSISTANCE FOR THE INDUSTRIES INVOLVED.

2. THE FIVE-YEAR INCOME TAX HOLIDAY IS REGARDED AS A
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BOUNTY OR GRANT SINCE THE GOVERNMENT IS PROVIDING A SPECIAL TAX BENEFIT TO DESIGNATED INDUSTRIES WITHIN THE COUNTRY.

IF THE INTERNAL REVENUE CODE OF THAT COUNTRY WERE TO ALLOW ANY ENTERPRISE TO BE FREE OF INCOME TAXES FOR THE FIRST FIVE YEARS OF ITS LIFE, THE TREASURY WOULD NOT CONSIDER

SUCH A PROVISION TO BE COUNTERVAILABLE, SINCE SUCH PROVISION IS A SOVEREIGN DECISION MADE BY TAXING AUTHORITIES TO COLLECT REVENUES ONLY AT AN ESTABLISHED STAGE OF THE LIFE OF THE FACILITY. HOWEVER THE TAX HOLIDAY, AS IT NOW READS, PROVIDES BENEFITS TO CERTAIN COMPANIES IN TAIWAN THAT ORDINARILY ARE NOT AVAILABLE UNDER THE INTERNAL REVENUE CODE OF THAT COUNTRY. SINCE MOST PRODUCTION EMANATING FROM FACILITIES IN TAIWAN IS EXPORTED, THIS FORM OF BENEFIT WOULD TEND TO PROVIDE DIRECT ASSISTANCE TO EXPORTS AND IS THEREFORE A BOUNTY OR GRANT UNDER THE U.S. COUNTERVAILING DUTY LAW.

3. TREASURY HAS NEVER RECOGNIZED THE DUTY-FREE TREATMENT OF IMPORTED MACHINERY, OTHERWISE KNOWN AS "DRAWBACK", AS A PERMISSIBLE REBATE SINCE THE MACHINERY ITSELF IS AN ITEM TO BE CONSUMED WITHIN THE CUSTOMS TERRITORY OF TAIWAN. THIS IS IN CONTRAST TO DRAWBACK PROVIDED FOR RAW MATERIAL IMPORTS, WHERE IT CAN BE ESTABLISHED THAT SUCH IMPORTS ARE SUBSEQUENTLY EXPORTED AND NEVER ENTER THE COMMERCE OF THAT COUNTRY.

4. TAIWAN GOVERNMENT OFFICIALS, ESPECIALLY THOSE IN THE BUREAU OF FOREIGN TRADE, ARE QUITE FAMILIAR WITH TREASURY'S APPROACH TO THESE PROGRAMS, SINCE THE ROC HAS BEEN THE OBJECT OF SEVERAL COUNTERVAILING DUTY INVESTIGATIONS IN THE PAST. WE ENCOURAGE EMBASSY TO
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ADVISE THOSE COMPANIES CONCERNED ABOUT THE POTENTIAL EFFECTS OF COUNTERVAILING DUTIES OF THE ABOVE VIEWS OF THE TREASURY ON THE STATUS OF THE ROC PROGRAMS UNDER U.S. COUNTERVAILING DUTY LAW. VANCE

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